

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15983 of the Toga Corporation, on behalf of the Embassy of Estonia, pursuant to 11 DCMR 1001, for permission under Section 1002 to locate a chancery in a D/R-3 District at premises 2131 Massachusetts Avenue, N.W., (Square 2513, Lot 1).

HEARING DATE: September 21, 1994
DECISION DATE: September 21, 1994 (Bench Decision)

ORDER

INTRODUCTION

This application was filed by the Toga Corporation on behalf of the Embassy of Estonia pursuant to Section 206 of the Foreign Missions Act (Title 11, Public Law 97-241, 92 Stat. 286, August 24, 1982) to locate its chancery at 2131 Massachusetts Avenue, N.W. (Square 2513, Lot 1) in a D/R-3 District. The application was considered by the Board in accordance with the requirements of Chapter 10 of the Zoning Regulations. Chapter 10 was adopted by the Zoning Commission to implement Section 206 of the Foreign Missions Act. The public hearing was conducted as a rulemaking proceeding under Chapter 33 of the Supplemental Rules of Practice and Procedure before the Foreign Missions Board of Zoning Adjustment.

APPLICATION

The subject site is located in an R-3 District within the Mixed Use Diplomatic (D) Overlay District. The site is a triangular lot with Massachusetts Avenue at its apex and Florida Avenue and 22nd Street on its east and west sides, respectively. The lot contains approximately 1,998 square feet of land. It is fully developed with a five-story plus basement masonry building. There is a semi-circular driveway located on the 22nd Street side of the building.

The building was constructed in 1905 by a physician who used it as his residence as well as his office. Since that time, it has been put to a variety of nonresidential uses, including a sanitarium, the Bulgarian Legation, the Peruvian Embassy, the original home of the Landon School for Boys and a social club.

In 1967, the Board granted an application to change a nonconforming use of the subject building from a rooming and boarding house to an apartment house (Appeal No. 8997). At that time, the Board noted that the "size and shape of the subject property is such that it is impractical for use for construction of a single family dwelling in accordance with existing zoning." The

Board concluded that granting the requested relief would result in a significant decrease in density given that the building was capable of accommodating approximately 50 roomers.

The site has been unoccupied on and off since 1985, when it was acquired by a partnership which intended to use the property as an inn. The partnership undertook extensive interior renovation of the building, which had fallen into disrepair, in an effort to restore it to its original condition. In addition, the partnership furnished much of the building with antique furniture and fixtures. In 1988, prior to completion of the renovation, the partnership was placed in receivership.

The Embassy of the Commonwealth of the Bahamas entered into a contract with the receiver in 1988 for purchase of the property. In 1989, the FMBZA unanimously granted approval for chancery use of the entire building for 14 diplomats and staff of the Bahamian Embassy in Application No. 15025. However, the Embassy did not complete the purchase of the property, and relocated elsewhere.

The property was again placed on the market and has been actively marketed for the last five years. Letters of intent to purchase have been submitted on behalf of several chanceries, foundations and law firms, but no formal written contracts to purchase were submitted. No contracts or letters of intent have been submitted for any type of residential use of the property.

The Embassy of Estonia, currently located in office space at 1030 15th Street, N.W., is the contract purchaser of the subject property. The Embassy intends to use the property for both chancery and residential purposes. The lower three floors of the property (up to 5,985 square feet) will be used for chancery, and the top two floors will be used for storage and residential purposes for staff and visiting officials.

The interior of the building is configured in the grand style of a bygone era. The first floor contains a large entrance foyer area and a salon, with a kitchen area in the rear. The second and third floors each contain three main rooms. The upper two floors contain several smaller rooms.

The Embassy will restore the exterior of the building, to include pointing up and cleaning the exterior brick work, repairing the facade over the 22nd Street entranceway, and installation of a flagpole, plaque and official seal. This exterior work has been approved by the Historic Preservation Review Board.

The Embassy of Estonia has four diplomats and two staff members. That number is not anticipated to increase in the foreseeable future. The hours of operation of the chancery are

9:00 a.m. to 5:00 p.m., Monday through Friday. The chancery receives three-four visits per day. Most business with the public is conducted by mail, telephone, and telecopy. Most visitors to the Estonian chancery use public transportation. U.S. citizens darenot required to have visas to travel to Estonia, so there is no visa traffic to the chancery. Additionally, all consular activities are conducted by the Estonian mission in New York.

At present, the Ambassador and two other diplomats drive to work, and this pattern is expected to continue at the new site. The Embassy currently leases reserved parking spaces for the three diplomatic vehicles in off-street garages, and intends to continue using off-street parking at the new location. One Embassy car will be parked in the driveway adjacent to 22nd Street and the remainder of the Embassy vehicles will be parked in parking facilities within walking distance. The Embassy has delivered to the Department of State a diplomatic note regarding its intention to use off-street parking spaces for diplomatic vehicles. The Embassy does not intend to request diplomatic parking spaces on the street.

The remainder of the staff uses public transportation. The new proposed chancery is located two blocks from the nearest Metrorail Red Line station at Dupont Circle (compared with three blocks from the Farragut North station to the current chancery site). In addition, there are a number of bus lines traveling in both directions on Massachusetts Avenue. Further, there is a taxi stand across Massachusetts Avenue at the Ritz Carlton Hotel at 21st and Massachusetts.

A chancery in the D/R-3 zone is a permitted use subject to FMBZA disapproval after review based upon the six criteria enumerated in Section 206(d) of the Foreign Mission Act and Section 1001 of the Zoning Regulations.

FOREIGN MISSIONS ACT CRITERIA

In considering the subject application, the Board must apply the specific criteria set forth in Section 1001, et seq., of Chapter 10 of the Zoning Regulations. A chancery shall be a permitted use in the Mixed Use Diplomatic District, subject to disapproval by the Board based on those criteria, which are as follows:

1. Section 1001.2. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.
2. Section 1001.3 and 1001.4. Historic preservation, as determined by the Board in carrying out this Section; and in order to ensure compatibility with historic landmarks

and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

3. Section 1001.5. The adequacy of off-street or other parking, and the extent to which the area will be served by public transportation to reduce parking requirements, subject to any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.
4. Section 1001.6. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State after consultation with federal agencies authorized to perform protective services.
5. Section 1001.7. The municipal interest, as determined by the Mayor.
6. Section 1001.8. The federal interest, as determined by the Secretary of State.

EVALUATION

With respect to the above-referenced six criteria set forth in the Zoning Regulations, the Board states the following:

1. The international obligation of the United States: By letter dated September 13, 1994, the Director of the Office of Foreign Missions of the Department of State, the delegated representative of the Secretary of State, determined that the international obligation of the United States to facilitate the acquisition of adequate and secure facilities for foreign missions in the Nation's Capital will be met by the approval of this application.
2. Historic preservation: The subject site is located in the Sheridan-Kalorama Historic District, but is not an individually-designated historic landmark. The five-story plus basement masonry building was built in 1905. There will be no new construction or demolition of the building. The interior configuration of the building will be maintained. The Embassy's proposed additions of a flagpole, plaque and official seal, and exterior maintenance, were reviewed and approved by the Historic Preservation Review Board (HPRB). The Advisory Council on Historic Preservation agrees with the recommendation

of the HPRB. Accordingly, there will be no adverse impact on the historic preservation objectives of the District of Columbia; to the contrary, the Embassy of Estonia's intentions with respect to the property will have a positive effect on its historic significance.

3. Parking and transportation: The building was constructed prior to 1958, and there is no on-site parking within the building, nor has there ever been any on-site parking within the building. Under Chapter 21 of the Zoning Regulations, no parking is required in conjunction with the proposed use. Even if parking were required, the building is exempt from that requirement as a historic structure under Section 2100.5 of the Zoning Regulations.

Only three automobiles are currently associated with the operation of the chancery, and are used by the Ambassador and two of the diplomatic officers. The other three persons who work in the chancery utilize public transportation to travel to and from work. These modes of transportation will continue at the new site. The three automobiles associated with the operation of the chancery are currently parked in commercial garages. As noted in the DPW report, the Embassy will park one Embassy vehicle in the driveway on 22nd Street. The remaining Embassy vehicles will be parked in off-street facilities within walking distance of the Chancery. The Embassy does not intend to seek reserved diplomatic parking spaces on the street in front of the building.

The Embassy has delivered to the Department of State Diplomatic Note No. 48/94, dated September 2, 1994, agreeing to secure and maintain one off-street parking space for each vehicle with diplomatic license plates that is driven to the chancery by Embassy staff. In addition, as the State Department has noted in its letter, the Embassy has also agreed, among other things, to waive immunity and inviolability of premises in order to allow for effective enforcement, if FMBZA approval is granted conditioned upon such provision of parking. The FMBZA commends the Embassy for granting such assurances, and relies upon these assurances in granting the conditional approval herein.

Embassy representatives have contacted four commercial parking garage operators in proximity to the subject site, each of which have given assurances that the parking needs of the Chancery can be met on a contract basis. The use of commercial parking garages within walking distance at the new location would not represent

any departure from the chancery's current practices. The chancery receives very little visitor traffic (an average of three-four visits per day) for several reasons--U.S. citizens do not need visas to travel to Estonia; all forms of business conducted by the public with the chancery are typically conducted by mail, telephone or telecopy; and all consular activities for Estonia are handled through the consulate in New York.

As noted by the Office of Planning and the Applicant's own expert transportation witness, the subject site is extremely well-served by public transportation. The site is located two blocks west of the Dupont Circle Red Line Metrorail station at 20th and Q Streets (compared to three blocks from the Farragut North Red Line station at the current Embassy location). In addition, there are numerous bus lines travelling in both directions along Massachusetts Avenue. Further, there is a taxi stand at the Ritz Carlton Hotel, across the street at 21st and Massachusetts Avenue, as well as numerous taxis available on a regular basis along Massachusetts Avenue. Finally, there is public parking along Florida Avenue during non-rush hour periods. The Office of Planning has concluded that the proposed chancery will not create objectionable impacts on area traffic and parking conditions.

The Board finds that it is reasonable to conclude that any other use of this sizeable property would involve at least one, if not more, vehicles. The Board also finds that the proposed chancery use will not create an objectionable impact on traffic and parking in the neighborhood, due to the small number of personnel who drive to work, the large amount of public transportation, and the low number of visitors to the chancery.

The Office of Foreign Missions, in its letter of September 13, 1994, has determined that this application meets the requirements of 22 U.S.C. Section 4306(d)(3), in that there are no special security requirements relating to parking considerations in this case.

4. **Protection:** The Office of Foreign Missions, in its letter of September 13, 1994, determined that pursuant to Section 4306(d)(4) of the Foreign Missions Act, the site and area are capable of being adequately protected.
5. **Municipal Interest:** The Director of the Office of Planning (OP) for the District of Columbia, the delegated representative of the Mayor, by memorandum dated September 12, 1994, determined that the Applicant has met the burden of proof under Sections 1001 and 1002 of the

Zoning Regulations relative to the location of the proposed chancery in a D/R-3 zone district. OP is of the opinion that the location of the chancery as proposed is not expected to create objectionable impacts on traffic and parking conditions in the general area, and recommends approval of the application. The Board finds that the proposed chancery use will be a less intense use than many of the previous uses.

6. Federal Interest: By letter dated September 13, 1994, from the Director, and by testimony of the General Counsel, the Office of Foreign Missions has determined that the location of the chancery for the Republic of Estonia at 2131 Massachusetts Avenue, N.W., is consistent with the federal interest. National and local authorities in Estonia have extended to the United States Embassy in Tallinn the full cooperation necessary to allow the acquisition of secure and adequate chancery premises. In addition, the U.S. Embassy is currently searching for a suitable Ambassador's residence in Tallinn and the Board's favorable action on the Estonian request will encourage the Estonian government to continue its full cooperation and support for this effort.

ADVISORY NEIGHBORHOOD COMMISSION

The subject site is located within the boundaries of Advisory Neighborhood Commission (ANC) 1D, which, by letter dated September 14, 1994, unanimously recommended that the application be approved. The issues and concerns of the ANC as expressed by the residents were parking, historic preservation of the exterior of the structure, maintenance of the exterior and interior of the building, the ability of this country to maintain the building, the disruption caused by renovation, the number of employees, trash pick-up, use of the property by vagrants, evening occupancy of the property by a caretaker, security of the neighborhood, the ability of the District government or federal government to police any agreements specifically negotiated to mitigate these problems, and the legal implication of waiving limited and specific diplomatic immunity as written in Diplomatic Note 48/94 between the Republic of Estonia and the United States government. After a full discussion of each of the points with the Ambassador and legal counsel, the residents took a straw vote to unanimously and strongly support the application. Neighbors directly affected by the proposal sent a representative, wrote, or attended the meeting. It was felt that the Republic of Estonia would meet each of the concerns expressed above. In conclusion, the ANC voted to support the application subject to diplomatic Note 48/94 which waives diplomatic immunity with regard to specific vehicular parking language.

In response to the concerns of the ANC, the Board agrees with the ANC's conclusion based upon the evidence and testimony. The Board notes that the issue of parking is central to this application, and that the Applicant and the Department of State have worked out a mutually-satisfactory arrangement for enforcement, which includes the waiver of immunity and inviolability. The Board notes that the application has received the approval of the Historic Preservation Review Board, and that the Embassy intends to have a caretaker reside on the premises. The Board also notes that the Ambassador has addressed the remaining issues to the satisfaction of the ANC, and commends the Applicant for addressing all issues raised in a spirit of cooperation.

The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC.

DECISION

On the basis of the record before it, the Board has determined that this application satisfies the criteria set forth in Section 1001 of Chapter 10 of the Zoning Regulations. Accordingly, it is ORDERED that this application is APPROVED, subject to the following CONDITIONS:

1. One Embassy vehicle may be parked in the driveway adjacent to 22nd Street.
2. The Embassy will secure and maintain one off-street parking space for each additional vehicle with diplomatic license plates that is driven to the chancery by Embassy staff.

VOTE: 4-0 (Reginald Griffith, Craig Ellis, Angel Clarens and John Parsons to approve; Laura Richards, not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

OCT 28 1994

BZA APPLICATION NO. 15983
PAGE NO. 9

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15983/RCL/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15983

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 28 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

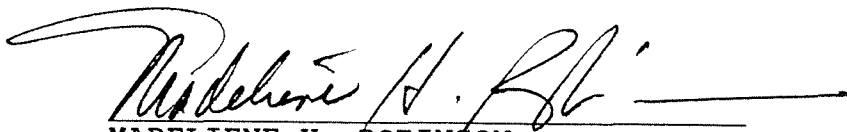
Christopher H. Collins, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Ambassador Toomas Ilves
Embassy of Estonia
1030 15th Street, N.W. #1000
Washington, D.C. 20005

Honorable Eric J. Boswell, Director
Office of Foreign Missions
U.S. Department of State., Room 2105
Washington, D.C. 20520

Walter Beachon
2100 S Street, N.W.
Washington, D.C. 20008

Marie Drissel, Chairperson
Advisory Neighborhood Commission 1-D
2135 Bancroft Place, N.W.
Washington, D.C. 20008


MADELIENE H. ROBINSON
Director

DATE: OCT 28 1994